

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KARLA PRESCOTT, Trustee of Fountainhead
Global Trust,

CV 05-834-AS

Plaintiff,

ORDER

v.

COMMISSIONER OF INTERNAL REVENUE,
ROY FRITTS, Individually and as Trustee of the
FIDUCIARY EDUCATIONAL SOCIETY,
DOROTHY FRITTS aka DOROTHY EMEOTT,
Individually and as Trustee of the EMEOTT
FOUNDATION, INTERNATIONAL
ASSOCIATION OF JEWISH SAMOANS, an
International Business Corporation, RICK
PRESCOTT, Individually and as Trustee of the
FIDUCIARY EDUCATIONAL SOCIETY, IVAN
A. CERMAK, Individually and as Trustee of the
FIDUCIARY EDUCATIONAL SOCIETY, JOAN E.
CERMAK, and JOHN DOES 1 through 10,

Defendants.

MARSH, Judge:

Magistrate Judge Donald C. Ashmanskas filed his Findings and

Recommendation on April 24, 2006 (# 108). The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). When either party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. See 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

The applicants filed timely objections. I have, therefore, given the file of this case a *de novo* review. I adopt the Findings and Recommendation (# 108) of Magistrate Judge Ashmanskas, with the following changes.

Pursuant to plaintiff United States' objection (# 109) to the statement on page two of the Findings and Recommendation, I strike the sentence, "Additionally, the Internal Revenue Service filed a tax lien against the property for the unpaid taxes of the Cermaks."

Pursuant to the Cermaks' objection (# 115) to the court's characterization of the bankruptcy proceedings they filed on December 27, 2005 as their "second" bankruptcy, I change all references to this bankruptcy to state that it was their "first." Further, all references to the bankruptcy proceedings filed by the Cermaks on January 27, 2006, are changed to reflect that this was their "second" bankruptcy, not their "third."

All other objections regarding the procedural history of the bankruptcy cases related to this litigation, and to the preparation of the findings, are not relevant to the recommendation presently before me. Accordingly, plaintiff's motion (# 97) to dismiss the Cermaks is GRANTED.

IT IS SO ORDERED.

DATED this 11 day of July, 2006.

/s/ Malcolm F. Marsh
Malcolm F. Marsh
United States District Judge